

REMARKS

This Amendment is responsive to the Office Action dated February 8, 2007. After entry of this Amendment, claims 1-9 and 13, 14, and 16-30 are currently pending in this application. Claims 14-16 were previously withdrawn from consideration. Claims 1-9, 13, and 17-30 are subject to examination. Claims 1-9, 13, 17-20, 23, 24, 27, 29, and 30 are amended. Claim 15 has been cancelled. Claim 1 is amended to replace the transitional phrase "comprising" with the transitional phrase "consisting essentially of." In addition, claim 1 is amended to recite a stabilizer system consisting of components B), C), and D) of the previous version of claim 1. Claims 2-9, 13, 17-20, 23, 24, 27, 29, and 30 are amended so as to be in proper dependent form. Support for these amendments is found throughout the specification and in the claims as originally filed. Claim 16 is amended to recite an article instead of a use. No new matter has been added.

In addition, Applicants respectfully request rejoinder of claims 14 and 16 on the ground that examination of these claims would not place an undue burden on the Examiner. Applicants believe that amended claim 16, in particular, should be rejoined, since it is directed to a food product coated with the composition of claim 1. However, if the Examiner wishes to maintain his restriction of claims 14 and 16, Applicants authorize the Examiner to cancel these claims.

Rejection Under 35 U.S.C. 102(e)

The Examiner rejected claims 1-9, 13, and 17-30 under 35 U.S.C. § 102(e) as anticipated by U.S. Pat. App. Pub. No. 2005/0107515 to Jakob et al (hereinafter, "Jakob"). The Examiner alleges that Jakob teaches a food-coating composition comprising an aqueous copolymer polyvinyl ester dispersion which comprises, among other components, from 1 to 12 parts of polyvinyl alcohol. Applicants believe claims 1-9, 13, and 17-30 are novel and patentable over Jakob.

The polyvinyl alcohol stabilizers of Jakob *must be a mixture* of at least two polyvinyl alcohols consisting of (1) at least one polyvinyl alcohol having a degree of hydrolysis of 85 to 90

mole percent and (2) at least one polyvinyl alcohol having a degree of hydrolysis of greater than 90 mole percent. (See paragraphs [0021] – [0023], [0028] – [0030], and [0049] – [0050] of Jakob) Thus, the polyvinyl alcohol stabilizer of Jakob must be a mixture of polyvinyl alcohols having different degrees of hydrolysis.

In contrast, claim 1 of the present application, as amended, reads as follows:

1. A food-coating composition comprising an aqueous copolymer poly(vinyl ester) dispersion consisting essentially of:
 - A) 100 parts by weight of a copolymer of from 40 to 95% by weight of vinyl esters of aliphatic saturated carboxylic acids, from 5 to 60% by weight of maleic esters and/or fumaric esters of monohydric aliphatic alcohols having a chain length of C₁-C₁₈ and optionally other comonomers; and
 - B) a stabilizer system consisting of:
 - 1) from 0.1 to 1.0 parts by weight of an emulsifier;
 - 2) from 0 to 0.45 parts by weight of a cellulose ether; and
 - 3) from 1 to 10 % by weight of at least one polyvinyl alcohol having a degree of hydrolysis in the range from 85 to 90 mol % and a viscosity of from 2 to 70 mPa·s for the 4% by weight aqueous solution at 20 °C

As indicated in amended claim 1, the aqueous copolymer poly(vinyl ester) dispersion **consists essentially of** the copolymer of A) and the stabilizer system of B). The transitional phrase “consisting essentially of” limits the scope of a claim to the specified materials or steps and those that do not materially affect the basic and novel characteristics of the claimed invention. See MPEP § 2111.03 (citing *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976)). Applicants have informed the undersigned that the addition of mixtures of polyvinyl alcohols having degrees of hydrolysis different from the range recited in amended claim 1 would materially affect the basic and novel characteristics of the claimed food-coating composition. Applicants have also informed the undersigned that addition of conventional food-

coating adjuvants, such as those described at page 8, line 31 to page 9, line 11 of the present specification, **would not** materially affect the basic and novel characteristics of the claimed food-coating composition. As such, the scope of claim 1, as amended, includes commonly used food-coating adjuvants, such as neutralizing agents, complexing agents, preservatives, and colorants, but excludes mixtures of polyvinyl alcohols having degrees of hydrolysis different from the range recited in amended claim 1. Furthermore, the stabilizer system of the aqueous copolymer poly(vinyl ester) dispersion may only **consist of**, among other recited components, at least one polyvinyl alcohol having the degree of hydrolysis and viscosity limitations recited above. As a result of this closed language, the stabilizer system of claim 1, as amended, **excludes** mixtures of polyvinyl alcohols having degrees of hydrolysis different from the range recited therein. Thus, claim 1, as amended, specifically excludes the polyvinyl alcohol mixtures of Jakob.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP 2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). By teaching that its polyvinyl alcohol stabilizers must be a mixture of polyvinyl alcohols having differing degrees of hydrolysis, Jakob fails to teach each and every element as set forth in claim 1, as amended. Thus, Applicant believes amended claim 1 is not anticipated by Jakob and is both novel and patentable over Jakob. Furthermore, since claims 2-9, 13, and 17-30 depend either directly or indirectly from claim 1, which is deemed novel and patentable, Applicants believe these claims are also novel and patentable over Jakob. Thus, Applicants respectfully request withdrawal of these rejections.

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

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Amendment dated May 7, 2007
After Final Office Action of February 8, 2007

Docket No.: 09600-00014-US

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 09600-00014-US from which the undersigned is authorized to draw.

Dated: May 8, 2007

Respectfully submitted,

Electronic signature: /Eamonn Morrison/
Eamonn Morrison
Registration No.: 55,841
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, Delaware 19899
(302) 658-9141
(302) 658-5614 (Fax)
Attorney for Applicant